ESCHEAT, FEDERALISM AND STATE BOUNDARIES

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Travelers in the United States are decreasingly aware of the fact that they cross state lines in their journeys. The indistinct, and somewhat arbitrary, lines which mark many of the divisions between the soil of one state and that of another are little-noticed by passengers in coast-to-coast jet airliners racing the sun across the continent. Even the more distinct boundary lines laid out along rivers and other natural features pass by unseen. Wanderers on trains and buses pass swiftly from state to state without thinking of state boundaries. Automobile excursionists will soon speed across the continent on a completed interstate highway network without pausing to have their picture recorded before the sign which explains the pavement's change in color or texture. However, if the driver fails to adjust the pressure on the accelerator to comply with a lower speed limit, a police siren will soon signify that a state boundary was crossed. Our corporations do business in many states, although incorporated in only one.

This great mobility of our population and the interstate nature of our business, all of which takes place without regard to state lines, paradoxically has increased the significance of these state boundaries for lawyers, judges, and students and teachers of law. No person interested in litigation either as a judge, a counsellor, a student or a teacher, is unaware of the significance of these state lines. Their existence is chiefly responsible for bringing to the American legal system the numerous problems which have come to be known as "Conflicts." Because of a recent Supreme Court decision,[1] the existence of these boundaries has become painfully clear to the many state legislators interested in effectuating their state's title to, or custody of, various classes of unclaimed, abandoned, or ownerless property. In 1961 the Supreme Court, acting as the policeman of the federal system, blew the whistle upon the efforts of many state legislatures, all speeding to gain control of the millions of dollars of unclaimed property which exists in the United States.

Anyone unacquainted with the facts might suppose that little ownerless property existed within the United States, and that litigation would not require the services of the highest court in the land. Such is not the case. Estimates and reliable records demonstrate that more than a few hundred dollars are involved. One authority estimated the total value of abandoned property in the United States as of January

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1 Western Union Co. v. Pennsylvania, 368 U.S. 71 (1961).

1962 was $15,000,000,000 and expanding at the rate of $1,000,000,000 a year.[2] During a thirteen-year period, New York collected $38,500,000; Michigan collected $7,500,000 in ten years; Massachusetts collected $2,500,000 during the first year's operation of its statute; and Pennsylvania collected $5,000,000 in seven years. California experts estimated their state would gross between $30,000,000 and $100,000,000 by enacting a comprehensive abandoned property law.[3]

Naturally, the first several years after the enactment of an abandoned property law are the most remunerative to the state. During that period the law will bring to the state ownerless property which has accumulated over a period of a great many years. Figures show, however, that even after the initial peak years, a state may expect to collect sizeable sums. For example, New Jersey grossed $1,175,000 in 1957—eleven years after it enacted comprehensive legislation.[4]

About a decade and a half ago doubt was expressed that revenue gained from the enactment of state abandoned property statutes would amount to much. At the same time it was suggested that the purpose behind the enactments was the desire to place abandoned property in a place of safekeeping until the owner appeared.[5] Time has shown this jaundiced view of the value of abandoned property statutes as a source of revenue to be unwarranted, and that the revenue prospects of such legislation are uppermost in the minds of legislators. Also a few years ago doubts about the suitability of an abandoned property statute as a revenue measure rested upon the argument that the amount gathered by a state would be so uncertain that fiscal experts could not budget against the income.[6] Experience under several state statutes which have been in existence long enough to pass the initial, peak years indicates (1) that following the initial period, the statutes provide a fairly definite return; (2) that the expense of administering abandoned property statutes does not exhaust the value of the abandoned property; and (3) that some portion of the abandoned property will be claimed by owners after the state has taken custody. Mention of New Jersey's experience eleven years after it enacted comprehensive legislation already has been made. Experts predicted that California might expect

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[2] Wall Street Journal, Jan. 22, 1962, p. 1, col. 1, cited in "The Supreme Court, 1961 Term," 76 Harv. L. Rev. 54, 132 n.218 (1962).

[3] McBride, "Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer," 14 Bus. Law. 1062, 1066 (1959). See Note, 42 Iowa L. Rev. 399, 400 n.5 (1957).

[4] McBride, *supra* note 3, at 1067.

[5] Garrison, "Escheats, Abandoned Property Acts, and Their Revenue Aspects," 35 Ky. L.J. 302 (1947).

[6] *Ibid.*

$5,000,000 or more each year from a comprehensive act.[7] Pennsylvania collected $743,577 in 1955; $1,006,263 in 1956; and $1,276,294 in 1957.[8]

New Jersey employs three full-time employees with total salaries of less than $14,000 annually. In cases where New Jersey was forced to collect abandoned property by suit, litigation expenses amounted to no more than twenty-five to thirty-five per cent of the value of the property recovered. In Kentucky, the interest which the state derived each year from the funds collected paid for more than one-half the costs of administering the program. New York's collection costs were about two and one-half per cent of the gross recovered.[9]

Refunds to claimants generally average between ten and fifteen per cent.[10] In view of this general refund experience, several state statutes cover into the general fund a certain percentage of the abandoned property, placing the balance (usually twenty-five per cent) in a fund from which claimants are paid.[11]

Considering the large sums involved, the fact that the annual amount may be predicted with some certainty after a few years of experience, the small collection costs, and the low refund rate, it is apparent why many states within the past decade have passed laws pertaining to abandoned property. Since World War II, states have searched for new sources of revenue to meet the increasing costs of state government occasioned by the general price rise and their citizens' demands for more services. Abandoned and unclaimed property provided an easy source of revenue, and securing such property is particularly attractive to legislators because the owner of the property is unknown and the present custodian's right to continued possession lacks an equitable base. Opponents of the statutes are either nonexistent or lack any solid arguments to oppose enactment.

Today, twenty-five jurisdictions have comprehensive unclaimed property acts.[12] Ten of these have the Uniform Disposition of Unclaimed Property Act, with some slight, but not always unimportant,

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7 McBride, *supra* note 3, at 1066.

8 Ely, "Pennsylvania Escheat Laws: Proposals for Revision," 64 Dick. L. Rev. 329, 330 (1960).

9 McBride, *supra* note 3, at 1066-1068.

10 *Ibid.*

11 See, *e.g.*, Nev. Rev. Stat. § 690.260 (1955); N.J. Stat. Ann. § 17:34-54 (Supp. 1962).

12 Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, and Wisconsin.

variations.[13] Twenty-seven jurisdictions (twenty-five states, Puerto Rico and the District of Columbia) do not have comprehensive legislation on the subject, although most of these jurisdictions do have some statutory provisions dealing with certain types of unclaimed or abandoned property.[14] Every state (and Puerto Rico and the District of Columbia) has a general provision providing that the property of a decedent dying intestate, without heirs, passes to the state. The unclaimed or abandoned property acts, however, proceed upon a different theory than statutes escheating property of a decedent dying intestate without heirs. The latter presupposes proof that the owner is dead and a probate of his estate to determine the absence of heirs. Even with the assistance of either a statutory or common-law presumption that unexplained absence for a certain number of years is equal to proof of death, the cumbersome probate procedure must be followed prior to the state receiving the absentee's property by way of escheat. On the other hand, the abandoned property statutes do not proceed upon the hypothesis that the owner is dead—merely that he is not exercising his rights of ownership or possession and that the state will intervene to vest in itself the possession or ownership.

A few of the abandoned property statutes vest immediately full title in the state, and cut off the rights of the absentee ever to regain the property or its value; other state statutes cut off the owner's rights after a certain period of years. Other statutes permit the owner (or his heirs) to recover the property or its value at any time in the future, no matter how remote. Statutes permitting claimants to recover the property or its value at any time are usually termed custodial statutes, whereas state laws cutting off ownership and possessory rights after a certain period of time (which may be as short as a few months, or as long as forty years) are escheat-type statutes.

The trend has been in the direction of custodial-type statutes, This is true even for statutes escheating property upon proof that the owner is deceased or that he has been missing for a specified number of years. Several of these state statutes provide that the owner or his heirs are entitled to the property if claim is made within a certain number of years after the state escheats the property. The Uniform

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13 9A Uniform Laws Ann. 253 (1957). Arizona, California, Florida, Idaho, Illinois, New Mexico, Oregon, Utah, Virginia, and Washington.

14 Alabama, Alaska, Colorado, District of Columbia, Georgia, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, and Wyoming.

Absence as Evidence of Death and Absentee's Property Act permits the owner or his heirs to recover the property at any time.[15]

Some states have abandoned property statutes of both types, although usually applicable to different classes of property. Of the twenty-five states having comprehensive abandoned property statutes, only four have strictly escheat-type statutes.[16] New Jersey, Pennsylvania and Wisconsin have statutes of both types, possibly with some overlapping.

These statutes reach a variety of types of property, most of it intangible. For example, without attempting to make the list exhaustive nor to suggest that all of the twenty-five states mentioned as having comprehensive unclaimed property legislation escheat all of the following, the types of intangible property specifically mentioned in state statutes are: checking account deposits in commercial banks, state and federal; savings bank deposits, both time and demand; deposits or share accounts in savings and loan associations and building and loan associations; deposits with credit unions, state and federal; corporate shares and dividends declared with reference to them; dividends or shares payable upon corporation liquidations, voluntary and involuntary; co-operative dividends or rebates; uncashed pari-mutuel race tickets; public utility rate rebates or deposit refunds; life insurance claims based upon life or endowment policies, or upon annuity contracts; bond payments, either interest or principal, issued by private or public corporations; contents of safety deposit boxes; property held by trustees, corporate or otherwise, payable to a settlor or beneficiary; property held by state or federal courts and arising out of a variety of legal proceedings; property of deceased inmates of state and federal institutions; tax refunds, state and federal; property held by bailees; land condemnation awards; lost, embezzled, or stolen property; witness and juror fees; unpaid wages and deductions from pay checks; uncashed negotiable checks, money orders and travelers' checks; uncashed warrants issued by governmental authorities, local, state and federal; unclaimed bequests; funds of "subversive" organizations; guardianship accounts; workmen's compensation awards; deposits under state motor vehicle safety responsibility acts; telegraphed money; court costs; and postal savings accounts.

The common law, of course, provided rules for the disposition of personal property which was ownerless. The ancient doctrine of *bona vacantia* decreed that certain ownerless property belonged to the

[15] 9 Uniform Laws Ann. 5 (1957). This act is in force in Maryland, Tennessee and Wisconsin.

[16] Arkansas, Connecticut, Hawaii and Minnesota.

Crown. State courts in the United States might have held that the doctrine of *bona vacantia* was applicable and that ownerless property of the types mentioned in the preceeding paragraph belonged to the state. This turned out not to be the course of history. At least one court held the doctrine was not part of the common law of a state,[17] and another court held that the doctrine applied only to property which the state could specifically describe.[18] The latter court, in addition, refused to require a holder of ownerless property, largely intangible in nature, to answer interrogatories designed to provide the information the state needed to describe the property. Thus, since the doctrine of *bona vacantia* proved to be unavailing, and because treating the property as belonging to a person who had died intestate without heirs involved cumbersome and expensive probate proceedings brought for each absentee, state legislatures enacted the unclaimed or abandoned property statutes.

The most perplexing conflict problem of current importance presented by the abandoned property acts is that of "multiple escheat." Phrased another way, it is: Which state, or states, have the power to claim abandoned property? The issue arises whether the state statutes involved are "escheat" or "custodial" in operation. Let us explore briefly the past and present state of the law as reflected by Supreme Court opinions, and then what further developments appear likely in the area of the states' power to escheat intangibles.

The first case, *Security Savings Bank v. California*,[19] did not involve multiple-state claims, but the opinion contained reasoning which later led to trouble. California brought an action to compel a bank to transfer to the state deposits which had remained unclaimed for more than twenty years. The bank was a California corporation, with its only place of business in California. Neither the last-known, nor current, addresses of the depositors were stated. The named defendants were the bank and the depositors. The bank was served personally; the depositors, by publication. Only the bank defended. The bank lost in the California state courts and contended in the United States Supreme Court that the California escheat action was obnoxious to the due process clause of the federal constitution. The bank contended that if the proceeding was in personam, depositors who were nonresidents of California were not bound because they were served only by publica-

[17] Illinois Bell Tel. Co. v. Slattery, 102 F.2d 58 (7th Cir. 1939). See Comment, 34 Ill. L. Rev. 171 (1939).

[18] Arkansas v. Phillips Petroleum Co., 212 Ark. 530, 206 S.W.2d 771 (1947), noted, 2 Ark. L. Rev. 416 (1948).

[19] 263 U.S. 282 (1923).

tion,[20] and that if the proceeding be considered in rem or quasi-in-rem, nonresident depositors were not bound because there was no seizure of the res at the beginning of the lawsuit.[21] Accordingly, the bank contended that however the proceedings were characterized, the judgment ordering the bank to transfer the dormant accounts to the state would not bind nonresident depositors. The bank urged that a judgment compelling it to transfer deposits to the state was lacking in due process if that judgment did not provide the bank a good defense in a suit brought by the depositors.

The Court rejected the bank's argument, stating that nothing constitutional turned upon whether the proceedings were called in rem or quasi-in-rem. The important thing, according to the opinion, was that in either in rem or quasi-in-rem proceedings, the state seized the res at the beginning of the law suit. The Court stated: "Seizure of the deposit is effected by the personal service made upon the bank,"[22] and further that "there is no constitutional objection to considering the proceeding as in personam, as far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants."[23] Thus, the Court held: "If the deposit is turned over to the state, in obedience to a valid law, the obligation of the bank to the depositor is discharged."[24]

As stated at the outset, no rival state claims were actually involved in the *Security Bank* case. In fact, since the bank was a California corporation with its only place of business in California and the whereabouts of the depositors unknown, it is difficult to identify what other state might have had a colorable right to escheat the same deposits. But however this might be, there was no other state suggesting it had power to escheat the deposits. The language of the Court, and the theory used to answer the bank's due process objection, led naturally to the conclusion that the proceeding in California barred all other claimants, whether the claimant was another sovereign state, creditor, lien holder, heir of the depositor or some other type of claimant. The Court did say that the proceeding was in rem as to other claimants, and that personal service upon the bank effected a seizure of the deposits. A logical deduction from the holding, therefore, was that California had seized a res and thus obtained jurisdiction to determine the rights of the whole world with respect to that res.[25] Although the Court did not

20 Pennoyer v. Neff, 95 U.S. 714 (1878).

21 *Ibid.*

22 Security Sav. Bank v. California, 263 U.S. 282, 287 (1923).

23 *Ibid.*

24 *Id.* at 286.

25 See Restatement, Judgments, Introductory Note, ch. 1; §§ 2, 3, 32, 73, 75 (1942).

specifically so state, the opinion certainly could be read as holding that the case was no different from one where California seized a tangible piece of property within its borders and adjudicated the ownership or custody of that tangible property.

At the time of the *Security Bank* opinion, perhaps the Supreme Court was unaware of the problems presented by the competing escheat claims of states other than California, and did not consciously intend to treat the action as in rem and binding on all claimants even where one claimant was another state seeking to escheat the same deposits. By the time *Connecticut Mutual Life Insurance Co. v. Moore*[26] appeared on the Court's docket, the Court was well aware of the problems presented by two or more states seeking to escheat the same intangibles. Nine insurance companies, incorporated in states other than New York, brought suit under the New York Declaratory Judgment Act for a declaration that the New York Abandoned Property Law was invalid. The courts of New York sustained the power of New York to take custody of all sums due upon life insurance policies issued for delivery in New York on the lives of New York residents.[27] The New York Court of Appeals clearly held that New York's power to take custody was not affected by the fact that the insured might have become domiciled in another state subsequent to the date the policy was issued and delivered. Nor did the New York court deem material the domicile of the beneficiary (if other than the insured) either at the time the policy was issued or subsequently, and neither did the fact that the insurance companies were incorporated outside New York worry the court.

The Supreme Court affirmed the judgment, but only in part. The affirmance was limited to a holding that New York possessed the power to take custody of sums due upon life insurance policies "issued for delivery in New York upon the lives of persons then resident therein where the insured continues to be a resident and the beneficiary is a resident at the maturity of the policy."[28] What about the rights of other states to escheat these same sums? The Court stated: "The problem of what another state than New York may do is not before us. That question is not passed upon."[29]

The partial affirmance was certainly a hollow victory for New York. The superiority of New York's claim over those of other states was not passed upon; New York was given the green light to take from

[26] 333 U.S. 541 (1948).

[27] Connecticut Mut. Life Ins. Co. v. Moore, 297 N.Y. 1, 74 N.E.2d 24 (1947).

[28] Connecticut Mut. Life Ins. Co. v. Moore, *supra* note 26, at 550.

[29] *Id.* at 548.

the companies custody of sums due upon policies issued for delivery in New York, insuring lives of New York residents if the insured continued to reside in New York until the policy matured, and if the beneficiary was a New York resident at the maturity date.

The opinion decided so little, one is forced to agree with Justice Frankfurter, who dissented, that it was hardly worth the Court's labors. The fact was that more states were enacting statutes dealing with abandoned property. Hence, the real issue on the horizon was the rights of competing states—not the power of a single state to take custody from the insurance company, bank, or some other holder. The issue of the state's power to affect the rights of absentee depositors, insureds, or beneficiaries ceased to be the central issue when the legislative tide in the state legislatures turned from escheat-type statutes to custodial-type. Under the latter, claimants were entitled to claim their "property" from the custody-taking state at any time, and few nonresidents would complain if a state, and its solvency, became their debtor. In fact, in those cases where the claimant, resident or nonresident, was barred from suing the insurance company or bank, such as where the applicable statute of limitations had run, the claimant was actually benefited by the fact that the state took custody of his property. In place of a claim against a private debtor barred by the statute of limitations, he was given a right to sue the escheating state at any time.[30]

Justice Jackson, in dissent, thought that the majority opinion either cut off the rights of other states, or doomed the insurance companies to double or multiple liability. He construed the Court's opinion relative to New York's jurisdiction to be based upon an examination of whether New York possessed sufficient contacts with the transaction

[30] *But cf.* Application of Barber, 274 App. Div. 712, 87 N.Y.S.2d 623 (1949). The significance of the running of the statute of limitations upon the escheat power of a state has been much debated. See Ely, *supra* note 8; Ely, "Escheats: Perils and Precautions," 15 Bus. Law. 791 (1960); Shestack, "Disposition of Unclaimed Property—A Proposed Model Act," 46 Ill. L. Rev. 48 (1951). Most of the state escheat statutes provide expressly that the running of the statute of limitations will not bar the escheating state's claim. See Uniform Disposition of Unclaimed Property Act § 16, 9A Uniform Laws Ann. 267 (1957). Some states have held that the expiration of the limitation period creates a vested right protected by state constitutional provisions. See Standard Oil Co. v. New Jersey, 5 N.J. 281, 74 A.2d 565 (1950), *aff'd,* 341 U.S. 428 (1951). The federal due process clause is not involved. See Campbell v. Holt, 115 U.S. 620 (1885); Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945). Because the limitations period for many of the claims covered by the escheat laws often does not begin to run until there is a demand for the property, instances where the state escheats property upon which the statute has run are not as numerous as writers make out. See "Developments in the Law: Statutes of Limitations," 63 Harv. L. Rev. 1177 (1950); Note, "The Lost Shareholder," 62 Harv. L. Rev. 295 (1948).

to make it reasonable for New York to take custody of the funds. Such language, of course, is reminiscent of *International Shoe Co. v. Washington*[31] and other cases involving the limits of the judicial power of a state over foreign corporations. Justice Jackson brought into focus the real problem—that of competing claims of several states—by suggesting that the sufficient contacts test would indicate that "other states have equally good grounds (*i.e.*, 'sufficient contacts') to escheat the same claims."[32] He lectured the majority:

> While we may evade it for a time, the competition and conflict between states for "escheats" will force us to some lawyerlike definition of state power over the subject. . . .
>
> This competition and conflict between states already require us, in all fairness to them, to define the basis on which a state may escheat.[33]

The opinion in the next case, *Standard Oil Company v. New Jersey*,[34] failed to contain a "lawyerlike definition" of the rights of competing states. Standard Oil was incorporated in New Jersey, but owned no tangible property in New Jersey except its stock and transfer books. The state brought suit to escheat twelve shares of Standard Oil common stock and unclaimed dividends. The stock was issued and the dividends held in other states; the last-known addresses of the stockholders were in other states and foreign countries. The state court judgment escheating the unclaimed property was affirmed by the Supreme Court over Standard Oil's objection that New Jersey was depriving it of property without due process of law because the judgment would not be binding upon nonresident shareholders, nor upon other states seeking to escheat the same intangibles.

The Court's opinion reverted to the test mentioned in the *Security Savings Bank* case. The opinion explained the *Security* case with the statement that seizure of the deposit, by personal service upon the debtor-bank, made the deposit subject to the same control as if the property involved was "tangible property." Applying this test to the *Standard Oil* case, the majority opinion held that personal service upon the corporation-debtor effected "a seizure" of the property, and gave power to cut off the rights of absentee owners. The implication of the holding was that anytime a corporate-debtor was subject to the personal judicial jurisdiction of a state, that state could effect a seizure of the obligations and, after giving the absentee-claimants notice and oppor-

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31 326 U.S. 310 (1945).

32 Connecticut Mut. Life Ins. Co. v. Moore, *supra* note 26, at 559 (dissenting opinion).

33 *Id.* at 563.

34 341 U.S. 428 (1951).

tunity to present their claims, could cut off their rights. The Court went on to hold that other state courts would be bound under the full faith and credit clause to recognize that absentee-claimants no longer owned a claim against the corporate-debtor. The Court equated the case to the power of a state by garnishment proceedings to affect a nonresident creditor's claim where the garnishment proceedings were instituted by personal service upon a nonresident debtor-garnishee temporarily in the garnishing state.[35]

Thus, Standard Oil was protected against suits by absentee claimants in the other forty-nine states by the full faith and credit clause, but what about protection from suits instituted by other escheating states? The Court handled this in one sentence: "The claim of no other state to this property is before us and, of course, determination of any right of a claimant state *against New Jersey* must await presentation here."[36] (Emphasis added.)

Was this not an indication that Standard Oil could not be sued elsewhere by another claimant state, and that another state with notions about escheating the same property would have to battle the sovereign state of New Jersey and not pick on Standard Oil?

Justices Frankfurter and Jackson, dissenting, did not construe the majority opinion to leave open the rights of other claimant states to contend with New Jersey. They viewed the Court's opinion as forever foreclosing the claims of other states to the same property. Thus, they foresaw an escheat race among all the states with power to subject the corporate-debtor to personal jurisdiction. Certainly such a result would be chaotic. One can visualize conflicting decisions concerning the demarcation line for the finish of such a race—*e.g.*, does the purse belong to the first state to start an escheat action, or to the first state to obtain a judgment in a trial court, or to the first state to obtain a final judgment from the highest court in a state, or to the first state to obtain payment of the money from the debtor? The ugly spectacle of state courts enjoining litigants in other state courts is suggested too.[37]

Justice Douglas also dissented. He agreed that the opinion foreclosed forever other state claimants. He pointed out that the New Jersey statute involved was of the escheat type, and from this he concluded that New Jersey could not be sued by another state.

Thus far, no Supreme Court decision had blocked any state effort to escheat intangibles. More specifically, no person or private corporation had successfully resisted state action to escheat intangible property

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35 Harris v. Balk, 198 U.S. 215 (1905).

36 Standard Oil Co. v. New Jersey, *supra* note 34, at 443.

37 *Cf.* James v. Grand Trunk W.R.R., 14 Ill. 2d 356, 152 N.E.2d 858 (1958).

by pleading that the judgment of the escheating state would not protect the debtor from the claims of other states, and that the first state deprived the debtor of property without due process of law.

The success of state escheat efforts came to an abrupt halt with the next Supreme Court decision, *Western Union Company v. Pennsylvania.*[38] Western Union is incorporated and has its principal place of business in New York, but engages in business in all fifty states, the District of Columbia, and foreign countries. Every year thousands of customers "telegraph" money to other persons. In some cases the receiver cannot be located within 72 hours, and the originating office is so notified.[39] Sometimes the originating office cannot locate the sender. Pennsylvania sought to escheat this "property" unclaimed by either the sender or the receiver for seven years if the telegram was dispatched from a Pennsylvania office of Western Union. Pennsylvania claimed the property whether or not the destination office or the payee was in Pennsylvania or in other states.

Again, as in previous cases, the debtor claimed that the Pennsylvania judgment did not discharge its liability to other claimants (including other states), and that Pennsylvania courts deprived the company of its property without due process of law. New York had already seized and escheated part of the funds claimed by Pennsylvania.

Justice Black, writing for the Court, agreed. Pennsylvania's judgment could not bind New York, an entity not a party to the action. Thus, if the Pennsylvania judgment were allowed to stand and was satisfied by Western Union, New York would be free, notwithstanding the full faith and credit clause, to institute proceedings against Western Union to escheat the same funds. And if New York courts held that the escheat legislation of that state applied to the funds, Western Union would have to "pay a single debt more than once" and this would "take its property without due process of law. . . . "[40]

Thus Western Union, which during the course of the case abandoned its claim to retain the money,[41] found itself still in possession. Logically a suit by New York against Western Union in the courts of New York, to which Pennsylvania was not a party, would be defeated by Western Union's plea that due process is lacking because New York cannot bind Pennsylvania. Until some way is found out of this dilemma, obligors will be able to retain possession of a large portion of the intangible property covered by the state statutes.

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38 Western Union Co. v. Pennsylvania, *supra* note 1.

39 Also, sometimes drafts delivered to either the receiver or sender are not cashed.

40 Western Union Co. v. Pennsylvania, *supra* note 1, at 77.

41 *Id.* at 73 n.2.

The *Western Union* case served to block efforts of Illinois to escheat approximately $700,000 due upon policies issued by the Metropolitan Life Insurance Company, a mutual life insurance company chartered by New York, doing business in all fifty states, and having its principal place of business in New York.[42] The insurance company secured a three judge federal district court injunction enjoining the Illinois Director of Finance from requiring compliance with the Illinois act. The property was escheatable under the Illinois statute because the last-known address, according to the records of the company, of the person entitled to the funds was in Illinois. The New York act escheated sums due upon life insurance policies if the policies were issued for delivery in New York and upon the life of a New York resident.

The opinion in the *Western Union* case leaves several issues in doubt. First, it is unclear whether, in the absence of claims by at least one other state, Pennsylvania could escheat the money and give Western Union a good defense against claimants who are not sister states. Suppose, for example, State *A* has a law escheating unclaimed utility deposits where the utility is incorporated in *A* and the deposits are made in *A*. Suppose further that the last-known addresses of all of the claimants are in State *B*, but that *B* either has no escheat law of any kind or has one which does not escheat the deposits, even when the debtor is doing business in *B* and thus subject to *B*'s judicial jurisdiction. If procedural due process is satisfied,[43] it would seem that State *A* should be permitted to escheat the deposits, *i.e.*, a judgment in *A* would cut off the rights of the unknown claimants even if they were nonresidents. Any other holding would permit the utility to reap a windfall, at least with respect to a considerable amount of the deposits, because experience has demonstrated that only a small percentage of the private claimants ever are discovered.

Supreme Court escheat cases prior to the *Western Union* case had decided that private claimants were cut off and that such judgments were entitled to full faith and credit in other states. The *Western Union* opinion can be read as leaving unaffected these prior holdings where no competing claims of sister states are involved.

A second issue left nebulous by the *Western Union* opinion is what degree of danger of double or multiple liability to sister states must the debtor show before the due process argument will defeat the efforts of the escheating state? The opinion refers to New York's claims as "aggressive," "actual," "active" and "persistent."[44] These

[42] Metropolitan Life Ins. Co. v. Knight, 210 F. Supp. 78 (S.D. Ill. 1962).

[43] See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

[44] Western Union Co. v. Pennsylvania, *supra* note 1, at 76.

are not words of exact dimensions. Permitting a debtor to defeat the escheat efforts of a state by the sole argument that some other state might some day enact a statute or amend its existing statute to escheat the same funds, unduly hampers the efforts of the escheating state without adequate reason. If the second state should enact an escheat statute in the future, or amend an old law, to cover the same property, the debtor may have to pay twice.[45] Any unfairness is but the price that entities doing business across state lines in a federal system must pay.

One thing is clear after the *Western Union* case: where the claims of a second state are aggressive and persistent, Western Union, and not Pennsylvania, will retain possession of the money. A holding that this should be the temporary resting place of the unclaimed money was certainly not the only way that the Court could save for later decision the competing claims of New York and Pennsylvania.

As between Western Union and the State of Pennsylvania, might not the Supreme Court have decided that Pennsylvania had power to order Western Union to pay over the money to the State of Pennsylvania and to give Western Union a discharge good against the whole world, including New York? At the same time, might not the Supreme Court have held that Pennsylvania lacked the power to foreclose New York's right to the funds and that after the decision, the way was still open for New York to bring an action against Pennsylvania to determine the final right to the property? Of course, such a result leaves unanswered the question: how does Pennsylvania obtain power to declare that New York no longer has any rights against Western Union? If Pennsylvania lacks power to conclude New York as against the claims of Pennsylvania, what gives Pennsylvania power to conclude New York with respect to New York's claim against Western Union? Do not the two issues rise and fall together, and depend upon whether Pennsylvania had "jurisdiction"?

It is submitted that the two issues do not necessarily rise and fall together. If we adhere to notions of in rem and quasi-in-rem jurisdiction, we are apt to reason either that Pennsylvania cannot conclude New York at all, or that Pennsylvania may destroy New York's claim against everyone—Western Union and Pennsylvania. Our notions of state power over intangibles are still affected by theories that were developed in cases involving tangibles. Thus, courts still frequently decide cases upon the basis that an intangible has a situs in a certain

[45] A debtor would not have to pay twice if the second escheating state's only action is not against the debtor, but instead, against the first escheating state; or if the second state recovers from the debtor, and the debtor is permitted indemnity from the first escheating state. *Cf.* Cities Service Co. v. McGrath, 342 U.S. 330 (1952).

place, although the same opinion will frequently admit that the concept of situs is fictional when intangibles are involved. It was exactly this type of reasoning which led the Supreme Court into trouble. In the *Security Savings Bank* case, ideas of in rem and quasi-in-rem jurisdiction were mixed with a fictional situs of intangibles, and this mixture pointed logically to a holding that any state which secured personal jurisdiction over the debtor brought intangibles within the in rem or quasi-in-rem jurisdiction of the courts of that state and all claimants were thereafter bound.

Judicial precedent prior to the *Western Union* case made clear that state power over intangibles, exercised by judicial power over the debtor, depended upon what the state sought to do with the intangible. If the state ordered the debtor to pay the debt to a creditor of a nonresident, such judgment bound the nonresident and destroyed any claim the nonresident had against the debtor.[46] However, if the state ordered the debtor to pay the debt to someone other than the nonresident's creditor, state power was found lacking.[47] Thus in the *Western Union* case, a holding that Pennsylvania had power to cut off New York's rights against Western Union and substitute instead a claim against Pennsylvania would not do violence to judicial precedent.

If we look at the effect of such a holding upon the rights of New York, no substantial harm appears. If it be argued that such a result deprives New York of its rights to sue Western Union in New York's own courts, the answer is that such a suit today will be unavailing because Western Union may plead the due process clause in the New York action, just as it did in the Pennsylvania action. If it be urged that such a result deprives New York of a defendant that cannot plead the defense of sovereign immunity, the answer is that now New York, if it ever hopes to settle which state—itself or Pennsylvania—has the superior escheat power, will be forced to invoke the original jurisdiction of the Supreme Court.

There is another reason to doubt the correctness of the *Western Union* opinion as a universal proposition. Take an escheat proceeding involving the exact Western Union facts, but suppose that the escheat statute of Pennsylvania contained a provision, like section 14 of the Uniform Disposition of Unclaimed Property Act, reading:

> Any holder who has paid moneys to the State Treasurer pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof

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[46] Harris v. Balk, *supra* note 35.

[47] New York Life Ins. Co. v. Dunlevy, 241 U.S. 518 (1916).

> that the payee was entitled thereto, the State Treasurer shall forthwith reimburse the holder for the payment.[48]

If Pennsylvania provides Western Union full indemnity against paying the debt twice, is it true that Pennsylvania is taking property from Western Union without due process of law? It should be pointed out that the Uniform Act defines "person" to include "any . . . government or political subdivision."[49]

The Supreme Court has held that indemnity guaranteeing a debtor protection against paying the same debt twice will save what would otherwise be an unlawful taking of property. In *Cities Service Company v. McGrath*,[50] the Attorney General had vested, pursuant to the Trading With the Enemy Act, two bearer debentures issued by Cities Service Company. One of the debentures was outside the United States, its whereabouts unknown. The Attorney General brought suit against Cities Service to compel payment of the debentures. Cities Service objected that a judgment against it would take its property without due process of law because a foreign court might later hold the obligor liable upon the debentures. The Supreme Court agreed that there was a chance that Cities Service "might suffer judgment, the payment of which would effect a double recovery,"[51] but that:

> In that event, petitioners [Cities Service] will have the right to recoup from the United States, for a "taking" of their property within the meaning of the Fifth Amendment, "just compensation" to the extent of their double liability. . . . [O]nly with this assurance against double liability can it fairly be said that the present seizure is not itself an unconstitutional taking of petitioners' property.[52]

It would follow from this that if some statutory or constitutional provision provided Western Union indemnity against double recovery, Pennsylvania's judgment ordering Western Union to pay the money to Pennsylvania would not deprive Western Union of property without due process of law. Furthermore, one might wonder whether the rationale of the *Cities Service* opinion is not a complete and adequate answer to New York's argument that Pennsylvania harms New York interests unconstitutionally when the Pennsylvania judgment destroys New

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[48] Admittedly, the phrase "proof that the payee was entitled thereto" remains to be construed.

[49] Uniform Disposition of Unclaimed Property Act § 1(g), 9A Uniform Laws Ann. 254 (1957).

[50] 342 U.S. 330 (1952).

[51] *Id.* at 335.

[52] *Id.* at 335-336.

York's rights against Western Union but substitutes a cause of action against Pennsylvania.[53]

This method of handling the multiple-escheat problem was not adopted by the *Western Union* opinion. The telegraph company still has the money and neither of the competing states has any. The stakes involved will not let the matter rest here, of that we can be assured. Thus it is appropriate to ask: What may be the course of history with respect to multiple-escheat issues? Several avenues are open: some legislative, some judicial and some of a private nature.

Any judicial solution to the problem must bring together all of the competing claimants, states and otherwise, before a single court where all may present their claims and where a single judgment will bind all. Bringing such a result to fruition is complicated where states are claimants because of sovereign immunity. Invocation of the ordinary and familiar statutory interpleader procedure of the federal courts cannot be used,[54] and thus it is no solution even if we ignore the problems presented by claims amounting to less than $500[55] and solve the diversity of citizenship requirements.[56] The way is always open for one state to consent to the jurisdiction of another. However, the result of one case where Massachusetts intervened in a New Jersey proceeding to escheat unclaimed dividends would indicate limited future use of this technique.[57] This is not to criticize the New Jersey court for deciding in favor of its own state, but only to point out that most of the double escheat claims will involve competing statutory bases for escheat, each having an equally arguable claim for recognition. In such an evenly balanced situation, a court cannot be "wrong" in preferring the claims of the state wherein it sits.

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[53] Section 19 of the Uniform Disposition of Unclaimed Property Act provides:

> Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the [State Treasurer].

If Pennsylvania had enacted such a provision, and if the Supreme Court had required Western Union to pay the money to Pennsylvania, there is a possibility that were Western Union compelled by a New York judgment to pay New York a second time, Western Union might have been able to recover from Pennsylvania by arguing that New York could have filed a claim with the Pennsylvania State Treasurer, under the above-quoted language, and that Western Union was equitably subrogated to New York's rights under the quoted section. *Cf.* State v. American-Hawaiian S.S. Co., 29 N.J. Super. 116, 101 A.2d 598 (1953). New York in all probability would not desire to present a claim upon its own behalf under this section.

[54] Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937).

[55] 62 Stat. 931 (1948), 28 U.S.C. § 1335.

[56] A state itself is not a "citizen of a state." Postal Telegraph Cable Co. v. Alabama, 155 U.S. 482 (1894).

[57] State v. American Sugar Refining Co., 20 N.J. 286, 119 A.2d 767 (1956).

It would appear that state courts and federal courts below the highest court in the land are incapable of binding both states, and thus the only judicial solution lies in the invocation of the original jurisdiction of the Supreme Court. The opinion in the *Western Union* case recognizes this. One state may sue another in the original jurisdiction of the United States Supreme Court for a declaration of rights concerning the escheat of abandoned property. It would seem clear that a "case or controversy" exists because the two or more states are claiming the same property.[58]

A problem may exist if the holder is joined as a party to the original action. For example, suppose that New York brings an original Supreme Court action against Pennsylvania, and joins Western Union as a party defendant. The issue is whether the case remains within the constitutional grant of original jurisdiction of the United States Supreme Court after such joinder. Western Union, a New York corporation, is a citizen of New York, and New York could not have sued Western Union in the original jurisdiction of the United States Supreme Court, had Western Union been the sole defendant. There are Supreme Court holdings that the presence of a party who could not have been sued is fatal to the original jurisdiction, and that it makes no difference whether the additional party be characterized as "proper," "necessary," or "indispensable."[59] The same procedural difficulty would arise if New York were to make defendants some claimants who were New York citizens. The *Western Union* opinion, however, seems to contemplate no original jurisdiction difficulties from this direction.[60] A holding that Pennsylvania possessed power to cut off all nonstate claimants to the funds and to take custody away from Western Union would have obviated whatever difficulties are presented by these procedural problems. The original action would then have been solely a contest between two or more states.

The *Western Union* opinion contemplates that the Supreme Court, in original actions, will face the task of choosing which state possesses the primary power to escheat various types of intangible property. The opinion refused to give any hint of what solution the Court will adopt. Justice Stewart was not so reticent. His memorandum opinion assigned primary escheat power to the state incorporating the holder, at

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[58] Texas v. Florida, 306 U.S. 398 (1939).

[59] California v. Southern Pac. Co., 157 U.S. 229 (1895); Texas v. Interstate Commerce Comm'n, 258 U.S. 158 (1922); Louisiana v. Cummins, 314 U.S. 577 (1941); Hart and Wechsler, The Federal Courts and the Federal System 226-227 (1953). *Contra,* Texas v. Florida, *supra* note 58, at 405.

[60] Western Union Co. v. Pennsylvania, 368 U.S. 71, 80 n.6 (1961).

least where that state was also the situs of the holder's principal office.[61] Only one other Justice has indicated any views concerning where the ultimate escheat power is vested where multistate contacts exist, and this only in dissent. In the *Moore* case, Justice Jackson stated that the power to escheat rested upon actual or constructive dominion over the property, or sovereignty over the person of the claimant.[62] However, as even the Justice himself admitted, these two concepts, while they might clearly dictate a lack of power in New York to escheat unclaimed insurance money simply because New York was the domicile of the insured when the policy was issued, would fail to provide an answer where one state claimed intangibles because of its dominion over the property and the other state claimed escheat power based upon sovereignty over the claimant.

One might suggest that an existing conflict doctrine already assigns primary power to the state possessing dominion over the claimant. This is the doctrine that *mobilia sequuntur personam.* The fact is that there is no general acceptance of this doctrine as applied to escheat even though it is generally applicable to the distribution of the personalty of a decedent dying intestate with heirs.[63] The state of the situs of the property will not always defer to the power of the owner's domicile at death when the issue is escheat. These cases thus indicate that we may really have a doctrine that the situs state always possesses the primary power; that in matters of succession the situs state usually refers to the law of the domicile, and that for many years we have had a rather large scale application of the renvoi principle without recognition of that fact.[63a] If this is true, the general rule heretofore followed in both succession and escheat is that the situs state possesses the final power to apply its own law to the property.

This does not indicate where the situs is. Situs as applied to intangibles is fictitious,[64] and the Court would be better advised to decide the multiple-escheat problem without reference to the term. The ultimate issue then is whether the state with contacts respecting the *property* is more or less important than the state which has contacts tied to the *owner* or *claimant.* Although the competing interests are

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[61] *Id.* at 80.

[62] Connecticut Mut. Life Ins. Co. v. Moore, *supra* note 26, at 560-62 (dissenting opinion).

[63] See State v. American Sugar Refining Co., *supra* note 57; Annot., 50 A.L.R.2d 1375 (1956); 2 Beale, Conflict of Laws § 309.1 (1935); Restatement, Conflict of Laws §§ 309, 471-484 (1934).

[63a] Griswold, "Renvoi Revisited," 51 Harv. L. Rev. 1165, 1194-1198 (1938).

[64] Severnoe Sec. Corp. v. London & Lancashire Ins. Co., 255 N.Y. 120, 123-124, 174 N.E. 299, 300 (1931).

fairly evenly balanced, the contacts respecting the property should prevail. The state whose contacts are tied to the claimant usually must rest its argument upon the fact that at some particular time the claimant bore some relationship to the state, *e.g.*, domicile. Since the exact whereabouts of the owner at the time a state escheats the property is unknown, the state relying upon contacts with the owner cannot show that their contact continued until the date the power to escheat is exercised.

This is the same point which Justice Jackson mentioned in the *Moore* opinion; that is, New York's power to escheat rested upon the fact that at the time the policies were issued, the insured was a New York resident. Many years had passed after that date and Justice Jackson thought New York's claim was weaker than a state's claim founded upon the grant of corporate powers to the holder. This same weakness exists where the escheating state bases its power upon the fact that a beneficiary, a stockholder, or a depositor was domiciled in the state at some time in the past. Many of the escheating statutes base the power of a state upon the fact that the claimant's last-known address was in the state, and many statutes also presume that the last-known address of the claimant is identical to the last address exhibited by company records. Is this not an attempt to make legally known what is impossible to prove, and to base the escheat power upon what *might* be true rather than upon what *is* demonstrably true? And finally is it not better and more just to assign the ultimate escheat power to a state which can demonstrate its present relationship to property rather than to a state which must rest its power upon a relationship to a claimant concerning which all we know is that it was true at some date in the past?[65]

This leaves unsettled the issue of whether the state which incorporated the holder, or the state which is the locus of the holder's principal place of business shall have the paramount escheat power. In this instance both states rest their power upon a relationship to the property. Perhaps multiple incorporations will make difficult the application of a rule that the state which incorporates the holder has paramount power.[66] However, the "principal place of business" concept is

[65] See Note, 65 Harv. L. Rev. 1408 (1952); Recent Developments, 62 Colum. L. Rev. 708 (1962); Comment, 59 Mich. L. Rev. 756 (1961). *But see* Note, 27 Ind. L.J. 113 (1951); Shestack, *supra* note 30. If the holder looked for the claimant at the record address and found him, the property is not unclaimed; if the search at the record address failed to find the owner, the odds are that he is not there, nor near there. The book address appears a slim reed upon which to rest escheat power.

[66] The prevalence of the practice of dual incorporation is not so great as to make this a problem of much magnitude. Railroad corporations are affected and they are

not free from difficulty.[67] In fact, it might result in no more solution of the multiple-escheat problem than the concept of domicile has in the elimination of double imposition of death taxes.[68]

Legislative solutions may appear at the federal or state level. A federal escheat law has been suggested,[69] and it may become a reality if more states move to escheat intangibles having a federal origin, such as federal income tax refunds and unclaimed federal bond interest and principal.[70] Valid federal escheat laws would eliminate the multiple-escheat problem for the property subject to the federal laws. State legislation is more probable. This may take the form of state legislation authorizing state officials to compromise cases where one or more states seek to escheat the same funds,[71] or perhaps state laws using some form of arbitration machinery.[72] A more common legislative solution is the enactment of a uniform law which specifies the conditions or contacts necessary for escheat. Already, of course, this remedy is in use.[74] If the language of the act grants the power to escheat to a state having contacts that may not exist except with reference to a single state, the problem of multiple escheat is eliminated. The Uniform Act does this for insurance proceeds, public utility deposits and refunds, and property held by state courts and public officers.[75] For example, insurance proceeds are escheatable, under the Uniform Act, only by the state which was the "last known address, according to the records of the corporation, of the person entitled to the funds. . . ."[76] The drafters of the act rejected the claim of the state incorporating the company because "it would concentrate the administrative burdens in the few states that incorporate most of the insurance companies, and also because such reliance would result in the same few states obtaining the use of the bulk of the unclaimed funds. . . ."[77]

holders of certain kinds of property covered by the escheat laws, *e.g.*, dividends, unpaid wages, and bond payments.

67 *Cf.* Sperry Products v. Association of Am. R.R., 132 F.2d 408, 412 (2d Cir. 1942) (dissenting opinion). See 72 Stat. 415 (1958), 28 U.S.C. § 1332(c).

68 *Cf. In re* Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932); *In re* Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601 (1934).

69 Note, 65 Harv. L. Rev. 1408, 1413 (1952).

70 California and Florida statutes claim escheat power over federal tax refunds and bond payments.

71 Uniform Act on Interstate Compromise of Death Taxes, 9B Uniform Laws Ann. 224 (1957) (Adopted in nine states).

72 *Cf.* Uniform Act on Interstate Arbitration of Death Taxes, 9B Uniform Laws Ann. 213 (1957) (Adopted in ten states).

74 Uniform Disposition of Unclaimed Property Act, 9A Uniform Laws Ann. 253 (1957) (Adopted in ten states).

75 *Id.* §§ 3, 4, and 8.

76 *Id.* § 3.

77 *Id.* § 3, Comm'rs' Note.

On the other hand the Uniform Act establishes for some types of property dual standards for escheat. For example, undistributed dividends may be escheated either by the state incorporating the company or by the state in which the company does business if that state is the location of the last-known address of the person entitled to the funds.[78] Any such dual standard raises problems of multiple escheat, as the drafters well knew. Accordingly, the Uniform Act contains a section which prevents multiple escheat of property covered by the dual standards established by other sections of the Act:[79]

> If two states, each having contact with the transaction, have each adopted the Act, the jurisdictional test becomes the last known address of the owner. Accordingly, if the holder is within the jurisdiction of the state of the last known address, that state takes custody of the unclaimed funds regardless of the domicile of the holder.[80]

Solving the multiple-escheat problem by uniform legislation is not impossible. The difficulty, as in all cases of uniform legislation, is to get all states to enact the Uniform Act. Unless many more states enact it, the multiple-escheat problem will remain for Supreme Court resolution. As is readily apparent from the above discussion, the drafters of the Uniform Act did not choose to give paramount power to the incorporating state. Instead they chose the state of the owner's last-known residence as carried on the books of the corporation. Reference to the book address will prevent two states from finding that each is the last-known address of the owner upon conflicting evidence.

In choice of law problems, cases and articles have recently argued that choice of the governing law should depend upon an evaluation of the policies of the several states which would be affected by application of the various local laws involved.[81] After the various policies are segregated, and the harmful or helpful effects of the application of the various local laws gauged, the governing law is based upon a balancing of the interests. This technique seems ill-suited to the problem of multiple escheat. For example, two of the basic state interests involved in escheat are (1) protecting and conserving the absentee's property awaiting his return or identification, and (2) earmarking the property for the use of all of the state's inhabitants if the owner does not appear. The former we might call the "custodial" interest; the latter the

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78 *Id.* § 5.

79 *Id.* § 10.

80 *Id.* § 10, Comm'rs' Note.

81 *Cf.* Cavers, "A Critique of the Choice-of-Law Problem," 47 Harv. L. Rev. 173 (1933); Hancock, "The Rise and Fall of *Buckeye v. Buckeye*, 1931-1959: Marital Immunity for Torts in Conflict of Laws," 29 U. Chi. L. Rev. 237 (1962); Pearson v. Northeast Air Lines, 309 F.2d 553 (2d Cir. 1962).

"revenue" interest. It seems impossible to determine which state, *e.g.*, the state of incorporation or the state of the last-known residence of the owner, would provide the greatest assurance that the owner would be found.[82] There is not enough patterning of human nature to conclude where an absentee would be most likely to look for his lost property, or to conclude where published or posted notices would be most likely to come to the attention of the absentee and remind him of the fact that he owns unclaimed property.

Likewise, it seems impossible to draw general conclusions concerning which state contributed most to the earning or protection of the property and thus has the superior "revenue" interest. The facts may vary greatly with respect to a single type of unclaimed property. For example, the unclaimed Western Union money orders might have been telegraphed from Pennsylvania by a New York citizen who stopped temporarily at a Pennsylvania Western Union office while en route to a west coast vacation. On the other hand, the sender might have been a Pennsylvania citizen who was born and raised in Pennsylvania and who earned all of his property in that state.

No doubt, counsel for companies subject to escheat laws are working upon private arrangements to eliminate the problem of multiple escheat or to frustrate entirely the power of any state to escheat the property. If the ultimate power to escheat is held to reside in the state which is the last book address of the owner, corporation counsel may be able to fashion private arrangements so that the corporation is not subject to multiple escheat and also alleviate some of the administrative burden of filing reports in several states. Corporations may even devise private arrangements either by means of charter or by-law provisions, or private contracts, which will pass ownership of the unclaimed property to the corporation after it is abandoned for a certain number of years—the number of years being less than the period specified in the escheat laws.[83] Time will tell whether interest in good stockholder and depositor relations will prevent these private arrangements from coming into existence. Time will also tell whether these private arrangements effectively frustrate the escheat power of a state and whether the private arrangements remain inviolate from hostile state

[82] It would seem that the last address shown by the books of the holder is not where the owner will be found. If he were still there, presumably the holder would have found him. Holders do make efforts to pay property to the owners—in fact, there is evidence that the wide-spread enactment of escheat laws will spur holders to greater effort to find owners. See McBride, "Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer," 14 Bus. Law. 1062, 1073 (1959).

[83] Note, 65 Harv. L. Rev. 1408, 1409 (1952); Note, 62 Harv. L. Rev. 295 (1948).

counterattack under the due process clause and the contract clause of the Constitution.

The cases which are certain to follow *Western Union* will force the Supreme Court to chart some exact boundaries of state power even though in the narrow area of escheat. The nature of the issue will not permit the Court to mark some general boundaries, leaving each state free to apply its own criteria for escheat provided the criteria chosen are reasonable.[84] As the Court develops the demarcation line of the escheat power, the Court may develop a readiness to consider other conflict problems under clauses of the Constitution. If the future brings a more active Supreme Court along these lines, the teacher of conflicts will become more of a constitutional law teacher than in the past.

[84] Compare the present relationship between clauses of the federal constitution and state compensation laws and awards. Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939); Watson v. Employers Liability Assur. Corp., 348 U.S. 66 (1954); Industrial Comm'n of Wisconsin v. McCartin, 330 U.S. 622 (1947).